

Bill No. 24-04/25-04/27-03
Concerning: Moderately Priced Dwelling
Units - Amendments
Revised: 11-30-04 Draft No. 6
Introduced: July 20, 2004/July 29, 2003
Enacted: November 30, 2004
Executive: _____
Effective: April 1, 2005
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Planning, Housing, and Economic Development Committee

AN ACT to:

- (1) increase sale and rent control periods for certain moderately priced dwelling units;
- (2) require certain eligibility standards for buyers and tenants of moderately priced dwelling units to be revised annually, and allow certain modifications of those standards;
- (3) further define when certain moderately priced dwelling units can be provided at an alternate location and when the Director of the Department of Housing and Community Affairs can accept a payment to the Housing Initiative Fund instead of requiring an applicant to build certain moderately priced dwelling units;
- (4) revise the standards for numbers of bedrooms in certain moderately priced dwelling units, and prohibit the waiver of those standards; and
- (5) require certain additional notices and procedures, and generally amend County law governing the moderately priced dwelling unit program.

By amending

Montgomery County Code
Chapter 25A, Housing, Moderately Priced
Sections 25A-3, 25A-4, 25A-5, 25A-7, 25A-8, and 25A-9

By adding

Sections 25A-5A and 25A-5B

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 25A-3, 25A-4, 25A-5, 25A-7, 25A-8, and 25A-9 are amended, and Sections 25A-5A and 25A-5B are added, as follows:

25A-3. Definitions.

The following words and phrases, as used in this Chapter, have the following meanings:

* * *

(g) *Control period* means the time an MPDU is subject to either resale price controls and owner occupancy requirements or maximum rental limits, as provided in Section 25A-9. The control period is [10] 30 years for sale units and [20] [[30]] 99 years for rental units, and begins on the date of initial sale or rental. If a sale [[or rental]] MPDU is sold to an eligible person within [10] 30 years after its initial sale [[or rental]], and if (in the case of a sale MPDU that is not bought and resold by a government agency) the unit was originally offered for sale after March 1, 2002, the unit must be treated as a new sale MPDU and a new control period must begin on the date of the sale[[, but the total of all control periods for any MPDU not bought and resold by a government agency must not exceed 30 years]].

* * *

25A-4. Income and eligibility standards.

(a) The County Executive must [[establish]] set and annually revise standards of eligibility for the MPDU program [[in regulations adopted under method (1)]] [, and must revise the standards when changes in market conditions affect the ability of moderate-income households to buy or rent housing] by regulation. These standards must [[establish]] specify moderate-income levels for varying sizes of households which will qualify a person or household to buy or rent an MPDU. The

Executive [may] must ~~[[establish]]~~ set different income eligibility standards for buyers and renters. The Executive may set different income eligibility standards for buyers and renters of higher-cost housing, as defined by regulation.

* * *

25A-5. Requirement to build MPDU's; agreements[; alternatives].

~~[[* * *]]~~

(a) The requirements of this Chapter to provide MPDU's apply to any applicant who:

- (1) submits for approval or extension of approval a preliminary plan of subdivision under Chapter 50 which proposes the development of a total of ~~[[35]]~~ 20 or more dwelling units at one location in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of development, regardless of whether any part of the land has been transferred to another party;
- (2) submits to the Planning Board or to the Director of Permitting Services a plan of housing development for any type of site review or development approval required by law, which proposes construction or development of ~~[[35]]~~ 20 or more dwelling units at one location; or
- (3) with respect to land in a zone not subject to subdivision approval or site plan review, applies for a building permit to construct a total of ~~[[35]]~~ 20 or more dwelling units at one location.

In calculating whether a development contains a total of ~~[[35]]~~ 20 or more dwelling units for the purposes of this Chapter, the development includes all land at one location in the County available for building development under common ownership or control by an applicant,

including land owned or controlled by separate corporations in which any stockholder or family of the stockholder owns 10 percent or more of the stock. An applicant must not avoid this Chapter by submitting piecemeal applications or approval requests for subdivision plats, site or development plans, or building permits. Any applicant may apply for a preliminary plan of subdivision, site or development plan, record plat or building permit for fewer than ~~[[35]]~~ 20 dwelling units at any time; but the applicant must agree in writing that the applicant will comply with this Chapter when the total number of dwelling units at one location reaches ~~[[35]]~~ 20 or more.

(b) Any applicant, in order to obtain a building permit, must submit to the Department of Permitting Services, with the application for a permit, a written MPDU agreement approved by the Director and the County Attorney. Each agreement must require that:

- (1) a specific number of MPDUs must be constructed on an approved time schedule;
- (2) in single-family dwelling unit subdivisions, [each MPDU must have 2 or more bedrooms] [[the number of MPDUs with a given number of bedrooms must have the same ratio (rounded to the nearest whole number) to the total number of MPDUs in the subdivision as the number of market-rate units with the same number of bedrooms has to the total number of market-rate units in the subdivision]] each MPDU must have 3 or more bedrooms; and
- (3) in multi-family dwelling unit subdivisions, the number of efficiency and one- bedroom MPDUs each must not exceed the ratio that market-rate efficiency and one-bedroom units

respectively bear to the total number of market-rate units in the subdivision.

The Director must not approve an MPDU agreement that reduces the number of bedrooms required by this subsection in any MPDU.

* * *

(d) (1) Notwithstanding subsection (c), the ~~[[requirements of this Chapter do not apply to]]~~ Director may allow fewer or no MPDUs to be built in a development with more than ~~[[34]]~~ 20 but fewer than 50 units at one location if the Planning Board, in reviewing a subdivision or site plan submitted by the applicant and based on the lot size, product type, and other elements of the plan as submitted, finds that ~~[[achieving a bonus density of 20 percent or more]]~~ building the required number of MPDUs at that location:

(A) would not allow compliance with applicable environmental standards and other regulatory requirements, or

(B) would significantly reduce neighborhood compatibility.

(2) If the Planning Board approves a density bonus of at least 20 percent for a development which consists of 20 or more ~~[[than 34]]~~ but fewer than 50 units at one location, the number of MPDU's required must be governed by subsection (c) unless the formula in subsection (c) would not allow the development to have one bonus market rate unit. In that case, the Board must reduce the required number of MPDU's by one unit and approve an additional market rate unit.

- 108 [(e) (1) In exceptional cases, instead of building the required number of
109 MPDUs, an applicant may offer to:
- 110 (A) Build significantly more MPDUs at one or more other sites
111 in the same or an adjoining planning area;
 - 112 (B) Convey land in the same or an adjoining planning area that
113 is suitable in size, location and physical condition for
114 significantly more MPDUs;
 - 115 (C) Contribute to the Housing Initiative Fund an amount that
116 will produce significantly more MPDUs; or
 - 117 (D) Do any combination of these alternatives that will result in
118 building significantly more MPDUs.
- 119 (2) If the Director finds that:
- 120 (A) In the project or subdivision originally proposed by the
121 applicant, an indivisible package of resident services and
122 facilities to be provided to all households would cost the
123 occupants of the MPDUs so much that it is likely to make
124 the MPDUs effectively unaffordable by eligible
125 households; and
 - 126 (B) An offer made by an applicant under subsection (e)(1) will
127 achieve significantly more MPDUs or units which low-
128 and moderate-income households can more easily afford;
129 and
 - 130 (C) These public benefits outweigh the benefit of constructing
131 MPDUs in each subdivision throughout the County, and
132 acceptance of the applicant's offer will achieve the
133 objective of providing a broad range of housing
134 opportunities throughout the County;

the Director must accept the offer made by the applicant instead of requiring the construction of MPDUs by the applicant. If the applicant can feasibly build significantly more MPDUs at another site, the Director must not approve any other alternative under subsection (e)(1).

- (3) The procedures for considering and implementing alternative offers must be established by executive regulation. To implement an offer, the applicant must sign an agreement with the Director not later than a time provided in the regulations.]

(e) The Director may approve an MPDU agreement that:

- (1) allows an applicant to reduce the number of MPDUs in a subdivision only if the agreement meets all requirements of Section 25A-5A; or
- (2) allows an applicant to build the MPDUs at another location only if the agreement meets all requirements of Section 25A-5B.

* * *

(k) [[Recording of covenants.]] The applicant must execute and record covenants assuring that:

- (1) The restrictions of this Chapter run with the land for the entire period of control; [[and]]
- (2) The County may create a lien to collect:
 - (A) that portion of the sale price of an MPDU which exceeds the approved resale price; and
 - (B) that portion of the foreclosure sale price of an MPDU which exceeds the approved resale price; and
- (3) The covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other parties that receive title to the property.

These covenants must be senior to all instruments securing permanent financing.

(1) [[Later deeds.]]

(1) [[The grantor must clearly and conspicuously state, in]] In any purchase and sale agreement and any deed or instrument conveying title to an MPDU, the grantor must clearly and conspicuously state, and the grantee must clearly and conspicuously acknowledge, that:

[[(1)]] (A) the conveyed property is a MPDU and is subject to the restrictions contained in the covenants required under this Chapter during the control period until the restrictions are released; and

[[(2)]] (B) any [[later]] MPDU owner, other than an applicant, must not sell the MPDU until:

[[(A)]] (i) the owner has notified the Department under Section 25A-8 or 25A-9, as applicable, that the unit is for sale; [[and]]

[[(B)]] (ii) the Department and, where applicable, the Commission, have notified the owner that they do not intend to buy the unit; and

(iii) the Department has notified the owner of the unit's maximum resale price.

(2) Any deed or other instrument conveying title to an MPDU during the control period must be signed by both the grantor and grantee.

(3) When a deed or other instrument conveying title to an MPDU is recorded in the land records, the grantor must cause to be filed in

the land records a notice of sale for the benefit of the County in the form provided by state law.

- (m) [[Voluntary MPDUs.]] Nothing in this Chapter prohibits an applicant from voluntarily building MPDUs, as calculated under subsection (c), in a development with fewer than 35 dwelling units at one location, and in so doing from qualifying for an optional method of development under Chapter 59. A development with fewer than 35 dwelling units where an applicant voluntarily builds MPDUs must comply with any procedures and development standards that apply to a larger development under this Chapter and Chapter 59. [Subsection (e) and Section] Sections 25A-5A, 25A-5B, and 25A-6(b) do not apply to an applicant who voluntarily builds MPDU's under this subsection and in so doing qualifies for an optional method of development.

25A-5A. Alternative payment agreement.

- (a) The Director may approve an MPDU agreement that allows an applicant, instead of building some or all of the required number of MPDUs in the proposed subdivision, to pay to the Housing Initiative Fund an amount computed under subsection (b), only if an Alternative Review Committee composed of the Director, the Commission's Executive Director, and the Chair of the Planning Board, by majority vote finds that:

(1) either:

- (A) an indivisible package of services and facilities available to all residents of the proposed subdivision would cost MPDU buyers [[or tenants]] so much that it is likely to make the MPDUs effectively unaffordable by eligible buyers [[or tenants]]; or

(B) environmental constraints at a particular site would render the building of all required MPDUs at that site economically infeasible; and

(2) the public benefit of additional affordable housing outweighs the value of locating MPDUs in each subdivision throughout the County, and accepting the payment will further the objective of providing a broad range of housing opportunities throughout the County.

(b) Any payment to the Housing Initiative Fund under this Section~~[[, to be acceptable by the Director,]]~~ must equal or exceed 125% of [[the profit made by building the substituted units as market-rate units rather than MPDUs. This profit must be calculated by subtracting the maximum sale price that could have been charged under Section 25A-7 for]] the imputed cost of land for each unbuilt MPDU. Except as further defined by Executive regulation, the imputed land cost must be calculated as 10% (for high-rise units) or up to 30% (for all other housing units) of [[from]] the actual sale price charged for each substituted unit. If the substituted unit will be a rental unit, the Director must calculate an imputed sale price under applicable regulations [[issued by the Executive]], based on the rent actually charged.

(c) Any payment to the Housing Initiative Fund under this Section may be used [[for any purpose that the Fund may otherwise be used for]] only to buy or build more MPDUs in the same planning policy area (as defined in the County Growth Policy) as the development for which the payment was made, and must not be used to reduce the annual County payment to the Fund.

(d) Any subdivision for which a payment is made under this Section is not eligible for any density bonus for which it would otherwise be eligible under Chapter 59.

25A-5B. Alternative location agreement.

(a) The Director may approve an MPDU agreement that allows an applicant for development of a high-rise residential building, instead of building some or all of the required number of MPDUs on-site, to provide at least the same number of MPDUs at another location [[within ½ mile]] in the same planning policy area, only if the Director finds that:

- (1) the public benefit of locating MPDUs at the proposed alternative location outweighs the value of locating MPDUs in each subdivision throughout the County; and
- (2) building the MPDUs at the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the County.

(b) To satisfy the requirements of this Section, an applicant may:

- (1) build, or convert from non-residential use, the required number of new MPDUs at a site approved by the Director [[or Board, as applicable]];
- (2) buy, encumber, or transfer, and rehabilitate as necessary, existing market rate housing units that meet all standards for use as MPDUs; or
- (3) return to MPDU use, and rehabilitate as necessary, existing MPDUs for which price or rent controls have expired.

(c) Each agreement under this Section must include a schedule, binding on the applicant, for timely completion or acquisition of the required number of MPDUs.

25A-7. Maximum prices and rents [[of moderately priced dwelling units]].

* * *

(b) [[~~Rental~~]] Rents.

(1) The rent, including parking but excluding utilities when they are paid by the tenant, for any MPDU must not exceed a maximum rent for the dwelling unit [established] set by [the County] Executive [in] regulations [adopted under method (1)]. Different rents must be [established] set for units when utility costs are paid by the owner and included in the rent. Different rents also may be set for high-rise [[and other]] rental units, but those rents must not apply unless the Director finds that no other reasonable means is available to finance the building of all required MPDUs at a specific development.

* * *

25A-8. Sale or rental of [[moderately priced dwelling]] units

* * *

(b) [[*Department of Housing and Community Affairs, Housing Opportunities Commission or other designated housing development agency or corporation.*]] *Sale or rental to government agencies or nonprofit corporations.*

* * *

(4) If more than one government agency or nonprofit corporation files a notice of intent under subsection (b)(2) with respect to a particular MPDU:

- (A) the Department prevails over any other buyer or renter;
- (B) the Commission prevails over any buyer or renter other than the Department;
- (C) any other government agency prevails over any nonprofit corporation;
- (D) the first government agency to file a notice prevails over any later agency; and
- (E) the first nonprofit corporation to file a notice prevails over any later corporation.

25A-9. Control of rents and resale prices; foreclosures.

* * *

(c) *First sale after control period ends.*

* * *

(3) The Department and the Commission, in that order, may buy an MPDU [the first time the MPDU is offered for sale after 10 years after the original sale or rental] at any time during the control period, and may resell the unit to an eligible person. A resale by the Department or Commission starts a new control period.

(4) The Commission and any partnership in which the Commission is a general partner need not pay into the Housing Initiative Fund any portion of the resale price of any MPDU that it sells [after 10 years after the original sale or rental].

(d) *Initial and [subsequent] later rent controls.* Unless previously sold under subsection (c)(1), [moderately priced dwelling units] MPDUs built or offered for rent under this Chapter must not be rented for [20] ~~[[30]]~~ 99 years after the original rental at a rent greater than that established by Executive regulations [adopted by the County Executive

under method (1)]. [Whenever any moderately priced dwelling unit] Any MPDU (other than those built, sold, or rented under any federal, state, or local program offered by the Commission) [is] offered for rent during the [20] [[30-year]] control period[, it] must be offered exclusively for 60 days to one or more eligible persons, as determined by the Department, for use as [his or her own] that person's residence, and to the Commission. The Commission may assign its right to rent such units to persons of low or moderate income who are eligible for assistance under any federal, state, or local program identified in Executive regulations [adopted by the County Executive under method (1)].

(e) *Foreclosure or other court-ordered sales.* If an MPDU is sold through a foreclosure or other court-ordered sale, a payment must be made to the Housing Initiative Fund as follows:

- (1) If the sale occurs during the [first 10 years after the original sale or rental] control period, any amount of the foreclosure sale price which exceeds the total of the approved resale price under subsection (a), reasonable foreclosure costs, and liens filed under the Maryland Contract Lien Act, must be paid to the Housing Initiative Fund. If the remaining balance under the original first deed of trust or mortgage exceeds the resale price under subsection (a), then the difference between the foreclosure sales price and the balance of the original first deed of trust (plus reasonable foreclosure costs) must be paid to the Fund.
- (2) If the sale occurs after the [[first [10] 30 years after the original sale or rental]] control period, and the unit was originally offered

for sale or rent after March 20, 1989, the payment to the Fund must be calculated under subsection (c).

(3) If the MPDU is a rental unit, the resale price under subsections (a) and (c) must be calculated using the maximum sales price in effect when the unit was originally offered for rent.

(4) If the MPDU is sold subject to senior liens, the lien balances must be included in calculating the sale price.

All MPDU covenants must be released after the required payment is made into the Housing Initiative Fund.

* * *

(g) *Bulk transfers.* This section does not prohibit the bulk transfer or sale of all or some of the sale or rental MPDUs in a subdivision within [20] 30 years after the original rental or offering for sale if the buyer is bound by all covenants and controls on the MPDUs.

* * *

25A-10. Executive regulations; enforcement.

* * *

(d) The Director may take legal action to stop or cancel any transfer of an MPDU if any party to the transfer does not comply with all requirements of this Chapter. The Director may recover any funds improperly obtained from any sale or rental of an MPDU in violation of this Chapter, plus costs and interest at the rate prescribed by law from the date a violation occurred.

(e) In addition to or instead of any other available remedy, the Director may take legal action to:

- (1) enjoin an MPDU owner who violates this Chapter, or any covenant signed or order issued under this Chapter, from continuing the violation; or
- (2) require an owner to sell an MPDU owned or occupied in violation of this Chapter to the County, the Commission, or an eligible [[buyer]] person.

25A-12. Annual report.

Each year by March 15 the Director must report to the Executive and Council, for the previous calendar year:

- (a) the number of MPDUs approved and built;
- (b) each alternative payment agreement approved under Section 25A-5A or alternative location agreement approved under Section 25A-5B, and the location and number of MPDUs that were involved in each agreement;
- (c) each approval of a different rent for a high-rise rental unit under Section 25A-7(b)(1); and
- (d) the use of all funds in the Housing Initiative Fund that were received as a payment under Section 25A-5A.

[[25A-12]] 25A-13. Applicability.

* * *

Sec. 2. Effective date; Applicability.

This Act takes effect on April 1, 2005. The amendments to Chapter 25A made by Section 1 of this Act which extend the control period for sale and rental MPDUs do not apply to any MPDU for which a sale contract or rental agreement was signed before April 1, 2005. The amendments to Section 25A-5 made by Section 1 of this Act which reduce the minimum size of a development where MPDUs must be located do not apply to any development for which a preliminary plan of subdivision was approved before April 1, 2005.

Sec 3. Executive proposal. By April 1, 2006, the County Executive, after consulting the Planning Board and Housing Opportunities Commission, must propose to the Council legislation or a regulation to limit alternative payment agreements under Section 25A-5A, inserted by Section 1 of this Act, to:

(a) senior citizen and special needs housing with unaffordable services and facilities; and

(b) environmental constraints that would render the building of required MPDUs at a site economically infeasible.

Approved:

Steven A. Silverman, President, County Council Date

Approved:

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council Date